CTIA
The Wireless Association™

Intercarrier Compensation Reform Principles

Wireless Termination Tariffs

Rating & Routing Points

CTIA – The Wireless Association ™
Presentation to
Paul Margie
Office of Commissioner Michael Copps
January 28, 2005

OVERVIEW

- Recent CTIA filings focus on three related areas of critical importance to wireless carriers:
  - Principles that should guide the FCC in implementing effective, fundamental intercarrier compensation reform that maximizes benefits for consumers;
  - T-Mobile/Nextel/Western Wireless petition seeking clarification that wireless termination tariffs unilaterally imposed by ILECs upon wireless carriers are unlawful; and
  - Sprint petition seeking clarification that wireless carriers can designate separate rating and routing points for the exchange of local traffic under existing numbering and interconnection rules.

THE INTERCARRIER COMPENSATION REGIME IMPACTS THE COMPETITIVE MARKET

- Intercarrier compensation is a major cost for the wireless industry.
  - In 2003, the CMRS industry was a net payer of $3 to $4 billion in intercarrier compensation charges. The CMRS industry also is a significant net payer into the universal service mechanisms.
- These are not only unnecessarily large "out of pocket" costs, but they impact the ability of wireless carriers to serve customers on an even footing with wireline carriers – particularly in rural areas.

CTIA INTERCARRIER COMPENSATION REFORM PRINCIPLES

- Rules should focus on benefits to consumers and should not guarantee that reforms would be revenue neutral for any class of carrier.
- Rules should encourage economic efficiency and promote competition.
- Rules should be technology neutral and should not confer a competitive advantage on one category of carrier or service provider over another.
- Each carrier should be responsible for recovering its network costs from its own end-user customers and, in a competitive market, should have flexibility in how those costs are recovered.
- Universal service support should be targeted, and no higher than necessary to ensure affordable end-user rates.
- Rules should be as simple as possible to administer.

T-MOBILE, NEXTEL & WESTERN WIRELESS PETITION ON WIRELESS TERMINATION TARIFFS

- T-Mobile, Nextel, and Western Wireless are asking the FCC to uphold the statute and FCC rules and clarify that unilateral and extortionate LEC tariffs for the termination of traffic from wireless carriers are unlawful.

- Failure to act will lead to service interruptions and will give LECs a significant and unfair cost advantage in the competitive marketplace.

  - Rural and non-rural incumbents LECs and competitive LECs have filed wireless termination tariffs in at least 20 states and the FCC. Formal state commission proceedings (*e.g.*, petitions, arbitrations, tariff investigations) are ongoing in more than 13 states.

- CTIA estimates that if all LECs filed wireless termination tariffs, wireless carriers would pay approximately $10 Billion to $40 Billion per year based on $0.02 to $0.08 per minute rates.

UNILATERAL TARIFFS BYPASS FEDERAL INTERCONNECTION PROCESS

- Tariffs bypass federally prescribed interconnection requirements, thwart Congressional intent, are anti-competitive, and adversely affect consumers.
- Congress established detailed process involving negotiation/arbitration, state commission approval, FCC oversight, and federal judicial review. This process is "central" to 1996 Telecom Act and "not to be evaded by state rule-making." *Verizon North I*, 309 F.3d 935, 941 (6th Cir. 2002).
- Tariffs thwart federal process by (1) removing incentives for rural LECs to negotiate in good faith and (2) permitting multiple state proceedings not subject to federal review.
- Under federal process, both rural LECs and wireless carriers have mutual incentives and obligations to negotiate for interconnection. Tariffs remove rural LEC incentives to negotiate in good faith and grant an unfair competitive advantage to rural LECs in the negotiation process.

FEDERAL LAW PROHIBITS UNILATERAL INTERCONNECTION TARIFFS

- Sec. 332(c)(1)(B) gives FCC, not states, authority over CMRS-LEC interconnection, and Sec. 2(b) precludes state regulation of entry and rates charged by CMRS carriers. *See Iowa Utilities Bd.*, 120 F.3d 753, 800 n.21(8th Cir. 1997) (upholding FCC's CMRS-LEC interconnection rules).
- Every federal appellate court addressing the issue has preempted tariffs filed in lieu of an interconnection agreement.
  - *Wisconsin Bell v. Bie* preempted state tariffing requirement because it "short-circuits negotiations," thereby interfering with federally prescribed interconnection procedures. 340 F.3d 441 (7th Cir. 2003).
  - *Verizon North I* preempted state tariffing requirement because it "provides an alternative route around the entire interconnection process." 309 F.3d 935, 943 (6th Cir. 2002).
  - *Verizon North II* preempted state commission order allowing CLEC "to bypass the federal statutory process" by *voluntarily* filing interconnection tariff requiring ILEC to pay tariffed rates. 367 F.3d 577 (6th Cir. 2004).

FCC PRECEDENT AND POLICY PROHIBIT UNILATERAL WIRELESS TERMINATION TARIFFS

- Prior to 1996 Telecom Act, FCC found that ILEC interconnection obligations under Secs. 201 and 332(c) preclude ILECs from adopting unilateral tariffs before negotiating interconnection agreements with wireless carriers.
- Since 1996, FCC consistently has refused to allow ILECs to impose unilateral tariffs in lieu of interconnection agreements. *Virginia Arbitration Order*, at ¶ 600, rejected ILEC proposal that "would allow for tariffed rates to replace automatically the [interconnection] rates arbitrated."
- Unilateral ILEC tariffs impose unlawful rates/terms.
  - Tariffs impose termination rates that are not TELRIC-based and thus are inconsistent with pricing standards under Sec. 252(d) of the Act.
  - Tariffs impose transport obligations on wireless carriers in violation of Sec. 51.703(b) of FCC rules.
  - Tariffs provide for one-sided payments only to rural LECs for traffic termination, in violation of Sec. 251(b)(5) of the Act.

RURAL LECs HAVE ALTERNATIVE OPTIONS FOR SEEKING TERMINATION COMPENSATION

- Rural LECs have legally enforceable right to demand good faith negotiations and a remedy if wireless carriers fail to comply.

- Under Sec. 20.11(b)(2) of FCC rules, wireless carriers are under mutual and reciprocal obligation to pay "reasonable compensation" to rural LECs for traffic termination.

- In adopting LEC-wireless interconnection rules, FCC "allowed LECs to negotiate the terms and conditions of interconnection with cellular carriers" and "required these negotiations to be conducted in good faith." *Second CMRS Report and Order*, 9 FCC Rcd 1411, ¶ 229 (1994).

- Rural LECs that cannot reach agreement with wireless carriers may file complaint under Sec. 208 of the Act.

SPRINT RATING & ROUTING PETITION

- Sprint seeks clarification that wireless carriers can designate separate rating and routing points for the exchange of local traffic under existing numbering and interconnection rules.
- The Telecommunications Act, the FCC's Rules, and two decades of industry practice recognize that having separate rating and routing points often is the most economically efficient alternative for both competitors and incumbents.

CMRS HAS INTERCONNECTED INDIRECTLY WITH RLECs FOR OVER 20 YEARS

- Since the inception of cellular industry 20+ years ago, CMRS has interconnected with PSTN using Type 2A interconnection at LATA tandem switches, thereby obtaining indirect connection to all switches/networks subtending the tandem, include RLEC networks.
- Since the inception of the cellular industry, CMRS has obtained telephone numbers in the locations where mobile customers primarily use their handset.
  - Under FCC's numbering rules, CMRS can obtain numbers rated in any LEC rate center where they provide service.
  - Thus, rating point is generally different from routing point.
  - Industry guidelines recognize that rating and routing points can be different.
- Section 251(a) explicitly provides that carriers like CMRS and RLECs can connect "directly or indirectly."

JSI's POSITION IS INCONSISTENT WITH LEGAL REQUIREMENTS AND IS ANTICOMPETITIVE

- FCC has held, *e.g.*, *Virginia Arbitration Order*, that the competitive carrier, not the ILEC, may decide whether to interconnect directly or indirectly.
- FCC Rule 20.11(a) states that LECs "must provide the type of interconnection reasonably requested by a mobile service licensee" and further confirms that CMRS can interconnect indirectly.
- JSI relies on Section 251(c)(2)(B), which imposes "additional obligations" only on non-rural ILECs and thus is irrelevant.
- The NTCA has recognized that the "most feasible and cost-effective option for most rural ILECs is to use the RBOC's tandem for transiting functions."
  - Because RLECs already have large trunk groups connecting their networks to the LATA tandems, the incremental RLEC cost to transport a call to a CMRS is minuscule.
  - Both CMRS and RLECs would face increased costs with a direct connection because of low traffic volumes and other factors.
- Under JSI approach, CMRS pays 100 percent of transports in both directions (both M-L and L-M), while RLEC pays nothing for transport.